

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES EARL BOYD, #274899,

Petitioner,

v.

CASE NO. 5:09-CV-10575
HONORABLE JOHN CORBETT O'MEARA

LLOYD RAPELJE,

Respondent.

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY JUDGMENT

This matter is before the court on Petitioner's motion for summary judgment concerning his pending petition for a writ of habeas corpus. This case was re-opened in March, 2010 to allow Petitioner to proceed on an amended petition. Respondent has since filed an answer to the petition and the state court record. Petitioner has filed a reply to that answer, as well as a supplemental pleading on July 5, 2011. Respondent has until August 12, 2011 to file an answer to the supplemental pleading. Petitioner filed the instant motion on July 26, 2011, essentially seeking habeas relief on two of his claims.

Federal Rule of Civil Procedure 56(c) provides that summary judgment is proper:

If the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(c). Although the parties submitted their initial pleadings last year, Petitioner has recently filed a supplemental pleading and Respondent still has time to respond. The Court has yet to fully review all of the materials in detail. Based upon an initial review of the pleadings, however, the Court cannot conclude that there is no genuine issue of material fact or that Petitioner is entitled

to judgment as a matter of law. Furthermore, a default judgment is unavailable in a federal habeas proceeding. *See Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970). The Court will address the merits of the case in a forthcoming opinion. Accordingly, the Court **DENIES** Petitioner's motion for summary judgment [Dkt. #26].

IT IS SO ORDERED.

s/John Corbett O'Meara
United States District Judge

Date: August 1, 2011

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, August 1, 2011, using the ECF system, and upon Petitioner at Gus Harrison Correctional Facility by first-class U.S. mail.

s/William Barkholz
Case Manager